

§ 76.785

GENERAL

§ 76.785 What is the purpose of this subpart?

The regulations in this subpart implement section 10306 of the Elementary and Secondary Education Act of 1965 (ESEA), which requires States to take measures to ensure that each charter school in the State receives the funds for which it is eligible under a covered program during its first year of operation and during subsequent years in which the charter school expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.786 What entities are governed by this subpart?

The regulations in this subpart apply to—

(a) State educational agencies (SEAs) and local educational agencies (LEAs) that fund charter schools under a covered program, including SEAs and LEAs located in States that do not participate in the Department's Public Charter Schools Program;

(b) State agencies that are not SEAs, if they are responsible for administering a covered program. State agencies that are not SEAs must comply with the provisions in this subpart that are applicable to SEAs; and

(c) Charter schools that are scheduled to open or significantly expand their enrollment during the academic year and wish to participate in a covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.787 What definitions apply to this subpart?

For purposes of this subpart—

Academic year means the regular school year (as defined by State law, policy, or practice) and for which the State allocates funds under a covered program.

Charter school has the same meaning as provided in title X, part C of the ESEA.

Charter school LEA means a charter school that is treated as a local educational agency for purposes of the applicable covered program.

Covered program means an elementary or secondary education program ad-

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ministered by the Department under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis.

Local educational agency has the same meaning for each covered program as provided in the authorizing statute for the program.

Significant expansion of enrollment means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant.

(Authority: 20 U.S.C. 8065a)

RESPONSIBILITIES FOR NOTICE AND INFORMATION

§ 76.788 What are a charter school LEA's responsibilities under this subpart?

(a) *Notice.* At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide its SEA with written notification of that date.

(b) *Information.* (1) In order to receive funds, a charter school LEA must provide to the SEA any available data or information that the SEA may reasonably require to assist the SEA in estimating the amount of funds the charter school LEA may be eligible to receive under a covered program.

(2)(i) Once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require.

(ii) An SEA is not required to provide funds to a charter school LEA until the charter school LEA provides the SEA with the required actual enrollment and eligibility data.

(c) *Compliance.* Except as provided in § 76.791(a), or the authorizing statute or

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implementing regulations for the applicable covered program, a charter school LEA must establish its eligibility and comply with all applicable program requirements on the same basis as other LEAs.

(Approved by the Office of Management and Budget under control number 1810-0623)

(Authority: 20 U.S.C. 8065a)

§ 76.789 What are an SEA's responsibilities under this subpart?

(a) *Information.* Upon receiving notice under § 76.788(a) of the date a charter school LEA is scheduled to open or significantly expand its enrollment, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program.

(b) *Allocation of Funds.* (1) An SEA must allocate funds under a covered program in accordance with this subpart to any charter school LEA that—

(i) Opens for the first time or significantly expands its enrollment during an academic year for which the State awards funds by formula or through a competition under the program;

(ii) In accordance with § 76.791(a), establishes its eligibility and complies with all applicable program requirements; and

(iii) Meets the requirements of § 76.788(a).

(2) In order to meet the requirements of this subpart, an SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA.

(3)(i) The failure of an eligible charter school LEA or its authorized public chartering agency to provide notice to its SEA in accordance with § 76.788(a) relieves the SEA of any obligation to allocate funds to the charter school within five months.

(ii) Except as provided in § 76.792(c), an SEA that receives less than 120 days' actual notice of the date an eligible charter school LEA is scheduled to open or significantly expand its enrollment must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under

the applicable covered program for the succeeding academic year.

(iii) The SEA may provide funds to the charter school LEA from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Approved by the Office of Management and Budget under control number 1810-0623)

(Authority: 20 U.S.C. 8065a)

ALLOCATION OF FUNDS BY STATE EDUCATIONAL AGENCIES

§ 76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

(a) For purposes of this subpart, an SEA must determine whether a charter school LEA is eligible to receive funds under a covered program based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA opens or significantly expands its enrollment.

(b) For the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives the proportionate amount of funds for which the charter school LEA is eligible under each covered program.